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LCI International.
Worldwide Telecommunications

July 30, 1997

Mr. William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Reply Comments of LCI International Telecom Corp. ("LCI") on
Local Competition Provisions in the Telecommunications Act of 1996
CC Docket 96-98
RM 9101

Dear Mr. Caton:

On behalf of LCI, attached is an original and four copies of the Company's Reply Comments on Public Notice concerning Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems.

Two copies of LCI's Comments have been delivered to Janice M. Myles of the Common Carrier Bureau, and one copy has been delivered to the International Transcription Service, Inc.

Sincerely,

Douglas W. Kinkoph
Director, Regulatory/Legislative Affairs

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:	)	
	)	
Implementation of the Local	)	
Competition Provisions in the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	RM 9101

REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP. ON PUBLIC NOTICE CONCERNING PETITION FOR EXPEDITED RULEMAKING TO ESTABLISH REPORTING REQUIREMENTS AND PERFORMANCE AND TECHNICAL STANDARDS FOR OPERATIONS SUPPORT SYSTEMS

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July 30, 1997

INTRODUCTION AND SUMMARY

In its evaluation of Ameritech Michigan's Section 271 application, the Department of Justice ("DOJ") stated

> **the most complicating factor . . . is . . . the absence of a common language of measures and standards to which to gauge the operation of [operations support systems ("OSS")]. Clarification in these areas will permit the states, the [DOJ], and the Commission to determine whether Ameritech is satisfying its obligation . . . under Section 251 and 271.** [1] [Emphasis added]

A rule by the Commission establishing performance standards[2] would give the ILECs, CLECs, state commissions, DOJ, and this Commission such a common language.

These Reply Comments by LCI International Telecom Corp. ("LCI") address the July 10 filings of the entities supporting, [3] and opposing, our May 30, 1997 Petition (collectively, "the opponents"[4]). These Reply Comments also reiterate LCI's request that the Commission convene industry/government meetings on an expedited basis to develop OSS performance standards, to be followed by a Commission issued Rule establishing performance standards.

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1 DOJ Evaluation of Ameritech Michigan'S Section 271 Application, at A-11.

2 For the purposes of these Reply Comments, performance standards means measurement categories, default performance benchmarks, and measurement methodologies, collectively. *See, generally*, Appendix B hereto.

3 Parties supporting the Petition include: the California Public Utility Corporation, the Public Service Commission of Wisconsin, the National Association of Regulatory Utility Commissioners, AT&T, MCI, Sprint, WorldCom, the Telecommunications Resellers Association, the Association for Local Telecommunications Services, the Competition Policy Institute, the Competitive Telecommunications Association, Teleport Communications Group, US ONE, American Communications Services, KMC Telecom and RCN Telecom Service, GST Telecom, WinStar Communications, Telco Communications Group, General Communication, USN Communications, Kansas City Fibernet and Focal Communications, Time Warner, Excel Communications, and the General Service Administration.

4 Parties generally opposing the Petition include Ameritech, Bell Atlantic/NYNEX, BellSouth, GTE, PacBell/SWBT, SNET, US WEST, ITTA, USTA, and Aliant Communications.

Collectively, the Comments to the LCI/CompTel Petition for Expedited Rulemaking ("Petition") indicate that parity of access to operations support systems ("OSS") does not exist. Moreover, no consensus exists regarding what parity of access to OSS means. To resolve finally the OSS parity issue and to get local telephone competition on track, the commission should convene an expedited, compressed set of industry/government meetings preparatory to a final Rule by the Commission establishing measurement categories, default performance benchmarks and measurement methodologies (collectively, "performance standards").

The Commission possesses the authority to conduct the expedited form of negotation rulemaking LCI suggests here, and to issue an order on OSS. FCC action on OSS would support state public utility commissions in their efforts to implement the Telecommunications Act,[5] and FCC action on technical standards would enhance and expedite the efforts of industry-wide standards setting bodies, such as ATIS. OSS performance standards, reporting, technical standards, and remedial provisions would resolve the ongoing and currently endless debate before state commissions and this Commission concerning *what* to measure, *how* to measure it, and *what parity means* for purposes of Sections 251 and 271. By so doing, the entire industry, and the government agencies charged with making competition work can move on to the most important phase of the historic shift the Congress intended to occur: the arrival of real and robust competition in the U.S telecommunications industry, to the great and lasting benefit of American consumers.

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[5] 47 U.S.C. §§ 151 et seq.

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DISCUSSION

These Reply Comments by LCI address the July 10 filings of the entities opposing our May 30, 1997 Petition and the issuance by the Commission of an NPRM. *Section I* responds to the primary issues raised in the opponents' July 10 Comments. *Section II* details LCI's proposal for convening expedited industry/government negotiations to establish OSS performance standards. Appendices A and B attached hereto contain proposed final rules in the form that LCI suggests would be appropriate for inclusion in the Code of Federal Regulations.

SECTION I.
REPLY TO THE OPPONENTS' JULY 10, 1997 COMMENTS

The opponents' July 10 Comments attest to the need for Commission to act to establish OSS performance standards. OSS performance standards developed through the proposed expedited industry/government meetings and associated FCC Rulemaking proposed by LCI would finally settle the OSS issue, so that all concerned can finally move on to the real issue at hand -- competition *among equals* for the telecommunications business of American consumers.

A. The Comments submitted indicate that the Commission needs to act affirmatively to establish OSS performance standards

Comments submitted indicate that no consensus exists regarding parity of OSS access. Indeed, the opponents' Comments fail to address the relief request and actually misstate the OSS parity issues as outlined in the Petition. Comments in favor of an expedited rulemaking indicate that no ILEC currently provides parity of access to OSS. Thus, the Commission affirmatively should establish OSS standards so that ILECs will know what levels of service they need to provide and so that CLECs will know what level of service they can expect.

1. The opponents' Comments do not address the critical role of ILEC internal performance standards in determining OSS parity

Perhaps the most startling thing about the opponents' July 10 filings is that none of them address the importance of ILECs disclosing internal performance measurements as a first step to determining whether OSS parity exists. The Petition specifically stated that:

(i) the ILECs had refused or otherwise failed to disclose their OSS performance standards [Petition at 7-8];

(ii) such disclosures were an absolute first prerequisite for this Commission, the state commissions, and the CLECs to determine if parity of OSS access was being provided; and

(iii) the ILECs should be ordered, on an expedited basis, to disclose such OSS performance standards they do have and to disclose OSS functions for which they do not have established performance standards.

The Commission's Public Notice on the Petition specifically reiterated these issues.[1]

Strikingly, the opponents do not deny that they:

(i) have refused or failed to disclose their internal OSS performance standards;

(ii) possess the ability to disclose their internal OSS performance standards; and

(iii) should disclose their internal performance standards as a prerequisite to determining the OSS parity requirements of the Act and the *First Report and Order*.[2]

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[1] DA No. 97-1211 at 1.

[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996)("First Report and Order"), *motion for stay denied*, 11 FCC Rcd 11754 (1996), Order on Reconsideration, 11 FCC Rcd 11754 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), aff'd in part, vacated in part sub nom. Iowa Utilities Bd. v. FCC, No. 96-3321 et al., slip. op. (8th Cir. July 18, 1997).

Thus, the principal relief sought by the petition -- that the ILECs disclose their internal OSS performance standards -- not only is strongly supported by every other commenter, but effectively stands unopposed by the ILECs.

2. ILECs have not provided CLECs parity of access to OSS

There no longer can be, if there ever was, any dispute that parity of OSS access has not been provided by the ILECs. The Petition laid out with devastating particularity, ILEC by ILEC, why that is so. One would have expected, especially given the ILECs' vast resources, knowledge of their OSSs, and the Commission's express request for comments on the state of OSS access, a vigorous ILEC denial, defense, or at least an acknowledgment of the detailed facts set out in LCI/CompTel Petition. But with the exception of some nit-picking here and there, [3] there is no genuine denial or defense. On this record, there can be no real dispute that parity of access to every ILEC OSS remains a distant dream.

3. Company-by-company Section 252 negotiations are not appropriate as a means to set Section 251 obligations

The opponents claim that the requested NPRM should be denied in favor of the on-going section 252 proceedings in the states. The ILECS claim that performance standards should be set only by contract. This claim simply is specious, for several obvious reasons.

First, it is far more difficult for a smaller carrier, with less bargaining strength, to obtain the same terms in contract negotiations with an ILEC as those which can be obtained by a larger carrier with greater bargaining strength and greater legal resources. Therefore, the ability of a smaller carrier to achieve parity of OSS access is far more difficult than that of a large carrier --

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[3] *See, e.g.*, Comments of American Communications Services at 5-6 (explaining the dismal failure of BellSouth); Comments of KMC Telecom and RCN Telecom Services at 2-3 (similar: BellSouth and NYNEX); and Comments of WorldCom at 3-5 (similar: Ameritech).

which is also unlikely to obtain service parity. *Second*, the disparity in the level of OSS access between CLECs which would result from performance standards negotiated by private contract will inevitably mean that many CLECs are competitively disadvantaged. No competition law should sanction this result. *Third*, CLECs lack the bargaining power to force the ILECs to disclose what level of service they are currently providing themselves. Even state commissions have been unable to force the ILECs to disclose their own performance standards. Therefore, CLECs cannot even identify what constitutes parity for negotiation purposes, the baseline for any performance standard contract. *Fourth*, a state may literally have hundreds of 252 agreements with varying degrees of performance standards. It would be impossible for a state to determine which of these agreements constituted "parity." With so many diverging levels of OSS access, an ILEC clearly would not be providing non-discriminatory access to its OSS to all CLECs, the fundamental mandate of Section 251 and the *First Report and Ordering*. For all of these reasons, the ILECs claim that the legal requirement of parity for all CLECs be established by individual private contract negotations is unworkable, indeed not in compliance with the legal requirements of Section 251 and the *Order*.

For the opponents on the one hand not even to attempt in any meaningful way to defend the sorry state of OSS access, and then on the other hand to suggest that the current section 252 proceedings should be the exclusive avenue for improvement, is tantamount to saying to this Commission, "Yes, we missed the deadline; no, we cannot tell you when the deadline can be met. Yes, we have no real answer to the criticisms being leveled at us. But please, do nothing -- let us stay indefinitely with the current procedures with no change whatsoever." Such an answer to the serious questions raised by the LCI/CompTel Petition cannot be taken seriously.

That conclusion applies with special force here given recent statements by state commissions on the subject of performance standards:

> (i) *Michigan*: "[C]omplete and appropriate performance standards have not as yet been adopted which would permit determinations to be made regarding nondiscriminatory access to OSS and other unbundled network elements."[4]
>
> (ii) *California*: "[U]nfortunately, the CPUC is immersed in the process of defining and costing the UNEs that will provide access to OSS functions and will not be able to provide detailed proposals on either rules or standards until that work is done"[5]; and
>
> (iii) *Illinois*: "[T]he [Illinois] Commission has been very reluctant to impose standards within an individual contract because there are obviously inefficiencies if there is one set of reporting requirements between Ameritech and AT&T and another set of reporting requirements between Ameritech and MCI."[6]

4. The opponents nowhere deny their legal obligation to provide parity of OSS access

As strange as the opponents' arguments are, what they do not argue, or more specifically do not challenge in the petition, is even more telling. For example, the opponents do not challenge the Petition's clear statements as to:

(i) what is meant by and needed by OSS access [Petition at 5-7];

(ii) the importance of the pertinent OSS access requirements [Petition at 3-5];

(iii) the need for or concept of "operational readiness" [Petition at 16-21];

(iv) the importance of verification and monitoring [Petition at 23-25];

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[4] *Consultation of the Michigan Public Service Commission* in the matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications of 1934 at 37].

[5] Comments of the People of the State of California and the Public Utilities Commission at 2.

[6] Transcript of Proceedings, In re: Common Carrier Bureau Operations Support Systems Forum (May 28, 1997) at 210 (statement of Carlotte Terkuerst of the Illinois Commerce Commission).

(v) what is meant now by "parity of access" [Petition at 25-26 (although they incorrectly assert that we are seeking something more than parity and nondiscriminatory treatment)].[7]

5. The opponents' takings argument is speculative and erroneous

The opponents' argument that the relief requested by the petition improperly would raise the ILECs' costs in violation of the due process and takings clauses of the Constitution is speculative, as recently noted by the Eighth Circuit in *Iowa Bd.* In *Iowa Bd.*, the Court rejected as not yet ripe for review the argument that the Commission unbundling rules amount to a Constitutional taking. Thus at the present, any takings argument remains speculative.

Moreover, we have not asked, and would not ask, to impose any obligation of the ILECs that is not otherwise imposed by the Act and the Order. Rather, we are asking that the Act and Order be effectuated and realized. Indeed, OSS performance standards will not "take" ILEC property without just compensation -- in Section 252 proceedings, states will decide specifically whether ILECs are entitled to compensation for providing CLECs parity of access to ILEC OSS. In reality, the opponents are saying that they are refusing to comply with the OSS access requirements of the *First Report and Order* to save money. If that is so, the problem here is deeper than we had suspected.

B. The Act grants the Commission authority to define unbundled network elements, which includes OSS and related performance standards

The Act provides the Commission with the authority needed to define unbundled network elements, as recently affirmed by the Eighth Circuit. Additionally, the Commission has a broad mandate to regulate telecommunications, which the opponents simply fail to recognize.

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[7] LCI's Petition and July 10 Comments make clear that LCI seeks nothing more -- and nothing less -- than parity of access to ILEC OSS.

1. The Eighth Circuit decision affirms this Commission's authority to establish OSS performance standards

Opponents argued that the Commission should "wait and do nothing" until the Eighth Circuit's decision was rendered because that decision might hold that the Commission lacks jurisdiction to grant the relief requested. On July 18, the decision was rendered, and resoundingly affirmed the Commission's authority to establish OSS performance standards.

The Eighth Circuit's decision expressly states that the FCC has authority under Section 251(d)(2) to define network elements, including OSS.[8] Section 251(d)(2) charges the Commission with defining the network elements that ILECs need to make available to competitors. The OSS performance standards would serve to define exactly what OSS means. Thus, the Commission possesses clear authority to establish OSS performance standards.

2. The opponents' Comments fail to recognize the breadth of the Commissions' jurisdiction, which includes jurisdiction to impose LCI's suggested remedy

In its July 10 Comments, LCI addressed the remedy issue raised in the Commission's June 10 Public Notice. As explained in LCI's opening Comments, LCI believes monetary damages are a wholly insufficient deterrent to ensure compliance with the all-important Section 251 obligations of ILECs. LCI also believes that there exists ample legal authority for the Commission to impose orders halting entry of long distance orders by ILECs for failing to comply with Section 251, until such time as the Commission determines that compliance has been achieved. The Commission has full authority to impose such remedies for the reasons set forth in LCI's July 10 Comments [*See* Comments, App. A at pp. 21-22], as well as under the overwhelming body of law set forth below.

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[8] See *Iowa Utilities Bd.* at 130-34. "The FCC is specifically authorized to issue regulations under subsection[] . . . 251(d)(2) (unbundled network elements)." *Id.* at 119 n.23.

The Commission has jurisdiction to impose Rules, and enter remedies for violations of those Rules, under Section 1; Section 4 (granting the Commission the power to "prescribe such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions"); Section 201 ("all . . . practices . . . for and in connection with any communication service . . . shall be just and reasonable" and "any such . . . practice . . . that is unjust or unreasonable is hereby declared to be unlawful"); Section 202 (similar); Section 303 ("[m]ake such rules and regulations . . . , not inconsistent with law, as may be necessary to carry of the provisions of this Act"); Section 214; and under Section 251 itself. *See, e.g., United States v. Southwestern Cable Co.*, 392 U.S. 157, 179-80 (1968) (stating that the FCC's jurisdiction extends to areas "reasonably ancillary to the effective performance of the Commission's various responsibilities"); *see also, Memorandum Opinion and Order,* CC Docket No. 87-313 (May 30, 1997) (Common Carrier Bureau can make "ARMIS reports more uniform in how they classify service and define intervals, units of measurements and other reporting factors"); *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking, 94 FCC 2d 292, 314 at ¶ 50 (1983) ("Federal agencies, in the absence of specific statutory prohibitions, have authority to require concerted action on the part of the private entities subject to their regulatory authority if this concerted action is necessary or appropriate to further the statutorily established goals and functions of the agencies"); *MTS and WATS Market Structure*, CC Docket No. 78-72, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 207 at ¶ 123 (1980) (Commission has the power to compel carriers "to adopt design criteria that will make interconnection effective"). Indeed, because the relief requested by the petition essentially "relates to the fashioning of remedies," *i.e.*, to remedy the failure of the ILECs to meet the deadline set by the Commission's

Order, the Commission's power to craft relief is "at its zenith." *Towns of Concord, Norwood & Wellesley v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992).

Under these cases and similar authority, the Commission clearly has jurisdiction both to enter a Rule on performance standards, as well as to order LCI's proposed remedy: cessation of entry of long distance orders until compliance with Section 251 and the Commission's orders implementing that statute is achieved. Significantly, numerous commenters supported this remedy as essential to effectuate any Commission rule on performance standards, and to ensure compliance with the ILEC's Section 251 obligations on an ongoing basis. [9]

C. The proposed expedited industry/government negotiations and associated FCC Rule would settle the OSS issue

The expedited and compressed industry/government meetings proposed would resolve finally the OSS parity issue and provide certainty regulators, ILECs, and CLECs. The proposed rulemaking does not seek to impose artificial deadlines for OSS parity nor does it seek to delay the Section 271 application process.

1. The proposed expedited industry/government negotiations and associated FCC Rule responds to today's competitive needs, not an "artificial timeline"

Aliant Communications argues that "[L]ECs should not be forced to comply with OSS standards set on an artificial timeline." [Comments of Aliant Communications at 4] Aliant goes on to state "[t]hat there is no reason for the FCC to adopt OSS standards since economic forces will drive cost-efficient standardization" because "[i]t would be foolish for an incumbent LEC to maintain an antiquated system to thwart competitors . . . when adoption of a new system could yield cost savings for the incumbent." [Ibid.]

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[9] *See, e.g.*, Comments of AT&T at 29-33; Comments of MCI at 11-12; Comments of Worldcom at 13; Comments of ALTS at 16-17; Comments of Comptel at 6-7.

The problem with this contention is two-fold. First, no basis exists whatsoever for assuming that ILECs will comply with the Act or the Order unless standards and deadlines are set and enforced (a conclusion grounded firmly in recent history). For example, the Commission's *First Report and Order* declared it "essential" that ILECs provide nondiscriminatory access to OSS by January 1, 1997,[10] yet not one ILEC is currently close to providing OSS parity to CLECs. Second, there is as much concern with the ILECs' changing their systems and adopting new ones in the guise of progress as there is in maintaining adequate systems. Thus, Aliant's assertion actually confirms what LCI's Petition and July 10 Comments consistently have said. [*See, e.g.*, LCI Comments at 9-10]

2. The proposed expedited industry/government negotations and associated FCC Rule will provide increased certainty to the 271 process, not delay

Ameritech asserts that petitioners' "real intent may be to simply put all Section 271 applications indefinitely on hold," in support of which assertion Ameritech mischaracterizes LCI's "approach" as an eleven-step approach that "could take years." [Ameritech's Initial Comments at 17-18] Quite the contrary, LCI advocates an <u>expedited</u> process that convenes all affected parties, as well as all relevant government agencies, to resolve promptly and finally the OSS problems faced by CLECs, ILECs, state commissions, the FCC, and the DOJ. *See* Appendix A hereto for LCI's suggested text for a seven-week expedited meeting process with streamlined briefing to aid the entry of an expeditious final Rule by the Commission. *See also* discussion in *Section II* below.

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10 *First Report and Order* at ¶¶ 521-22.

Far from "stringing things out," LCI's Petition seeks an expedited, prompt and final resolution of the OSS issues now. By putting the OSS issue to rest, CLECs, ILECs, and regulators alike can move to the true goal of the Act -- developing real and robust competition for the benefit of American consumers.

3. The proposed expedited industry/government negotiations and associated FCC Rule would develop performance standards for OSS parity, not preferential treatment for CLECs

Bell Atlantic and NYNEX contend that LCI "seeks to impose requirements on the Bell companies and other incumbent local exchange carriers (ILECs) that would require ILECs to give preferential treatment to competing local exchange carriers (CLECs) compared to the service provided to their own customers." [Comments of Bell Atlantic and NYNEX at 1] As explained in detail in our petition and July 10 Comments, this contention may make for fine rhetoric (it is the opening sentence of their Comments), but it does not remotely comport with reality. As the Petition states repeatedly, and as our July 10 Comments and Appendices A and B hereto make clear, LCI seeks parity of access -- no more, but certainly no less.

4. The proposed expedited industry/government negotiations and associated FCC Rule would develop performance standards for OSS parity, not dictate ILEC back-office operations

BellSouth contends that "[L]CI and CompTel are attempting to dictate how their competitors should run their back-office operations." [Comments of BellSouth at ii] Again, as explained in detail in our petition and July 10 Comments, this contention also may make for fine rhetoric (it is the opening sentence of BellSouth's Comments), but it also does not reflect the relief requested in the Petition. To repeat, we seek only parity of access to ILEC OSS. The only way to know whether parity exists is for ILECs to disclose the OSS performance they provide

themselves with the OSS performance that CLECs receive. Indeed, all we care about is the *effect* of the opponents' back-office operations -- not how they run them.

5. The proposed expedited industry/government negotiations and associated FCC Rulemaking would aid state commissions and industry standards setting bodies, not "end-run" these efforts

GTE contends that "[p]etitioners are trying to do an end-run around these processes [*e.g.*, ATIS and "other industry standards-setting committees"] by having the Commission set standards without regard to state interconnection decisions or industry efforts." [Opposition of GTE Service at 2] Again, as explained in detail in our petition and July 10 Comments, this contention may make for fine rhetoric, but it does not comport with reality. We have gone out of our way to suggest the express inclusion of *all* applicable state and industry processes and groups. *See* Appendix A hereto and *Section II* below.

SECTION II.
DISCUSSION OF PROPOSED FINAL RULES

The Commission's Public Notice specifically suggested that commenters supporting the issuance of a rule "are encouraged to file suggestions for specific rules, including specific rule language, that the Commission might include in such a notice of proposed rulemaking." In accordance with that suggestion, LCI submits its suggestions for proposed rules in Appendices A and B hereto. The rules are self-explanatory, but a brief introduction to LCI's conception of them might be helpful.

The proposed final rules submitted with these Comments generally track the proposed rule language submitted with our corrected July 16 Comments, the primary difference being that the proposed rules now appear in a complete format as they might appear in the Code of Federal

Regulations. Additionally, LCI has made the following modifications relative to the terminology used throughout its previous Comments and Appendices A & B:

(i) "Performance Intervals" has become "Performance Benchmarks" and

(ii) "Measurement Formulas" has become "Measurement Methodologies."

The purpose of these changes is to ensure a consistent use of terminology among the companies that comprise the Local Competition Users Group ("LCUG"). No substantive changes have been made.

A. Suggested Industry/Government Negotiations on Performance Standards [Alt A] (*See* Appendix A at p. 1)

LCI believes that appropriate performance standards can be adopted most efficiently through a compressed and expedited set of industry meetings participated in by ILECs, CLECs, and government observers/participants. LCI has set forth a timetable in its rules, so that the meetings would be completed within 48 days, or approximately seven weeks. With time built in for appointment of representatives of the ILECs and CLECs, industry associations, and government observers/ participants, as well as time to organize themselves into subgroups to negotiate and draft actual rules, 28 days, or four weeks is allowed for the intensive work of the negotiations. Given the deep experience the participants already would have, and the relatively confined subject matter of the discussions, four weeks of intensive discussions would appear adequate to determine those areas as to which agreement can be reached, and those as to which agreement cannot be reached. LCI believes that any longer period simply would result in long delays between meetings, with no real work would be done until the last few weeks in any event. Given the urgency of this matter for the industry, state commissions, and the FCC, LCI believes that the FCC should expedite the process and determine those areas as to which agreement can be reached and areas as to which agreement cannot be reached.

LCI then proposes that one brief be submitted by all ILECs jointly and by all non-ILECs jointly, with NARUC observers/participants and DOJ observers/participants also encouraged to file a single brief. The briefs would set out the areas of agreement and those of disagreement. The limited number of briefs would ease the burden on the Commission and at the same time sharpen and focus the issues remaining for the Commission's final determination. LCI's proposal has expressly provided for the Commission to adopt other rules if it chooses beyond those agreed to by the affected parties. The Commission may wish to allow others to brief these matters as well.

Without sharpening the issues and limiting the number of briefs addressing the particular points as to which decision is needed, LCI believes the Commission could be swamped in a morass of technical papers and affidavits that would be virtually impossible to wade through in anything less than years. LCI's great concern is that, if a purely paper proceeding is adopted by the Commission, the technical and statistical nature of the issues would make a decision purely on a paper record unnecessarily complicated and difficult to decide.

LCI believes that this proceeding should be distinguished from the policy decisions normally engaged in by the Commission. Here, the Commission's *First Report and Order* already has articulated its OSS parity policy. What remains is operationalizing the Commission's stated policy with detailed rules. To operationalize the Commission's existing OSS policy, the compressed, expedited procedure that LCI suggests would be more effective than a traditional open record.

In addition, LCI's procedure would allow five members of the Commission's staff to observe, lead and participate in all meetings. These five staff members would gain invaluable, in-depth knowledge of the issues, the areas of agreement and disagreement, and could most

usefully guide the Commission in the remaining decisions. LCI believes that this procedure, or something like it, would ensure that all views are heard and that the paper record remains manageable for prompt and expedited Rulemaking, which is urgently needed by the entire industry, state commissions, and the FCC.

B. Role of Commission standards (*See* Appendix B hereto for suggested text for Commission Rule on Performance Standards)

The Commission has clear jurisdiction to establish OSS performance standards to further implement its August 1, 1996 local competition order. The recent decision of the Eighth Circuit in *Iowa Utilities Board v. FCC*, No. 96-3321, slip op. (8th Cir. July, 18, 1997) leaves no doubt as to the Commission's unquestioned jurisdiction.

LCI believes that there are three subsets of "performance standards" in its Appendix B as to which an expedited set of industry/government negotiations could implement rules. These are: measurement categories; default performance benchmarks; and measurement methodologies. Measurement categories can be thought of as the "*what*," measurement methodologies can be thought of as the "*how*," and default performance benchmarks can be thought of as the "*to what level*."

The massive litigation now ongoing before state commissions is largely over which categories are to be measured (the "*what*"), and exactly how such measurements are to be accomplished (measurement methodologies, or the "*how*"). Lawyers can, and do, cross-examine for literally weeks on the various approaches to *what* is to be measured and *how* it is to be measured. A major step forward for state commissions, ILECs, CLECs, and the FCC would be to simply "get on the same page" and speak "a common language," as the DOJ so aptly put it, in the areas of *what* is to be measured, and *how* they are to be measured.

The Local Competition Users Group ("LCUG") put forth its proposal on these matters in mid-May, and they were included in LCI's original May 30, 1997 petition at Appendix B. Early in its existence, LCUG recognized that it was essential that a plan be developed to measure ILEC's performance for all essential OSS functions. To establish these performance standards, representatives from each of the LCUG companies (LCI, MCI, AT&T, Sprint, and WorldCom) evaluated present measurement criteria contained in requirements or good business practices to determine the final measurement categories and default performance benchmarks to be measured. Establishing the default performance benchmarks was difficult because LCUG lacked historical trend data from the ILECs. The ILECs have been reluctant to share current performance data. Therefore the default performance benchmarks established by the LCUG were drawn from the best of class and/or good business practices.

The Commission's *First Report and Order* sets forth various areas of activity in which ILECs must provide parity. LCUG has developed measurement categories, measurement methodologies, and default performance benchmarks in eight areas. These are: (1) pre-ordering, (2) ordering and provisioning, (3) maintenance and repair, (4) general, (5) billing, (6) operator services and directory assistance, (7) network performance, and (8) interconnection, unbundled network elements, and unbundled network element combinations (the network platform). [11]

It should be noted that, in many of these areas, ILECs do not currently report as a routine matter to state commissions because they affect only competitors and equal access to the ILECs monopoly systems, and not consumers directly. Traditionally, state commissions have required service quality measurements in areas that affect consumers directly. Such matters as the period

[11] ¶¶ 534-40 of the Commission's Order require parity of access to operator services and directory assistance, which is why they have been included here.

of time within which a customer's service record is delivered; the period of time in which an unbundled loop is provisioned; and the period time in which bills are rendered to CLECs are just a few of the examples of the kinds of measurements that are crucial for the development of effective competition, but which have not been necessary in the past to determine whether consumers in a particular state were being served adequately. Thus, the LCUG measurements are, in many instances, essential to competition, but nevertheless new measurements, never previously required by state commissions or the FCC, since parity of access for competitors is a concept introduced for the first time by the Telecommunications Act.

The default performance benchmarks which the Commission would set would be exactly that, "default." Under LCI's proposal, these benchmarks would apply only to determine parity standards where actual performances delivered by the ILEC for itself had not been reported. Where such data has been reported, and where it is complete, the default performance benchmarks would be inapplicable, and parity would be established by each ILEC's own data. Parity is, after all, a relative concept, which differs among ILECs. The Commission's default performance standards are necessary only where the actual performance benchmarks of an ILEC are not reported.

Under LCI's proposal, state commissions would remain the bodies to establish reasonable performance benchmarks. These benchmarks are the heart of competition, and they are matters best left in the first instance to state commissions. Where state commissions have established those performance benchmarks, they would retain complete jurisdiction to enforce compliance with the particular performance benchmarks they had established, and to impose penalties for ILEC failure to comply with applicable state commissions orders as to performance benchmarks.

C. Reporting requirements and beta tests

LCI set forth in its petition and subsequent Comments the need for ILECs to disclose on a monthly basis the ILEC's performance benchmarks for the preceding 24 months. Such reports should contain data relating to the ILEC itself, the ILEC affiliate/subsidiary, and all CLECs on average, and for the individual CLEC to which the report is made. Such reporting, to state commissions and the FCC, is critical to ensure the ILECs compliance with providing its competitors parity of access to its OSS. All relevant agencies would retain jurisdiction to enforce their own rules.

Essential to achieving such parity of access is the development of adequate OSS interfaces and the operability and scaleability of such systems. Therefore, the FCC should mandate that that the ILEC's demonstrate compliance with the Section 251 OSS access requirements, through a beta test that each billing site it operates can process the lesser of (a) 10% of its customer base per month for the regions covered by that billing site, or (b) 20,000 orders per billing site per day. The beta test should run for not fewer than ninety (90) days from entry of this order, and should be repeated at ninety (90) day intervals thereafter, with results reported to the Commission and relevant state commissions, which may take such corrective action.

D. Technical standards

In its Comments, LCI highlighted the need for technical standards and proposed that such standards be established via national standard setting bodies, a position supported by virtually all parties. However, while the ILECs call for the establishment of national technical standards, the ILEC's conveniently fail to address the urgent need for such bodies to establish such technical standards *by some reasonable date*. Therefore, LCI proposes that the Commission require

industry parties to establish technical standards by May 1, 1998, and if by such a date the parties have failed to establish such standards, the FCC by October 1, 1998 would set any unresolved technical standards.

CONCLUSION

LCI has done everything possible to expedite resolution of what is clearly a most serious impediment to opening up local telephone markets, and providing real competition in all telecommunications markets for American consumers. The overwhelming support from other carriers, state commissions, users (*e.g.*, the GSA), and other industry members is well considered, well reasoned and well supported by authority and experience. The ILECs' opposition, in sharp contrast, is nothing short of makeshift arguments, offered with no apposite authority, that runs counter to experience, history and common sense. The Commission should act expeditiously in granting the relief requested. It has the authority to do so. It has the mandate to do so. And it is appropriate and necessary that it do so.

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Respectfully submitted,

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